

§ 452.5

Secretary following completion of the election before suit can be filed. In view of the remedy provided, an investigation prior to completion of an election may have the effect of publicizing the activities or unsubstantiated allegations of one faction to the prejudice of the opposition. To avoid this result, and as a matter of sound statutory construction, the Department will exercise its investigatory authority only in circumstances in which the outcome of the election could not be affected by the investigation.⁴ Thus, the Department ordinarily will employ its investigatory authority only where the procedural requirements for a title IV investigation have been met; but in unusual circumstances or where necessary to collect or preserve evidence an investigation may be conducted after the conclusion of balloting.

§ 452.5 Effect of violation on outcome.

Since the remedy under section 402 is contingent upon a finding by the court, among other things, that the violation “may have affected the outcome of an election”⁵ the Secretary as a matter of policy will not file suit to enforce the election provisions unless the violations found are such that the outcome may have been affected.⁶

[38 FR 18324, July 9, 1973, as amended at 50 FR 31310, Aug. 1, 1985; 63 FR 33780, June 19, 1998]

§ 452.6 Delegation of enforcement authority.

The authority of the Secretary under the Act has been delegated in part to the Assistant Secretary.

[38 FR 18324, July 9, 1973, as amended at 50 FR 31309, Aug. 1, 1985]

⁴However questions involving the use of force or violence or the threat of the use of force or violence under circumstances which may violate section 610 (29 U.S.C. 530) of the Act will be referred promptly to the Department of Justice for appropriate action.

⁵Act, sec. 402(b) (29 U.S.C. 482).

⁶*Dunlop v. Bachowski*, 421 U.S. 560, 570 (1975), citing *Wirtz v. Glass Bottle Blowers*, 389 U.S. 463, 472 (1968) and *Schonfeld v. Wirtz*, 285 F. Supp. 705, 707-708 (S.D.N.Y. 1966).

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Subpart B—Other Provisions of the Act Affecting Title IV

§ 452.7 Bill of Rights, title I.

The provisions of title I, “Bill of Rights of Members of Labor Organizations”⁷ (particularly section 101(a)(1) “Equal Rights,” section 101(a)(2) “Freedom of Speech and Assembly,” and section 101(a)(5) “Safeguards against Improper Disciplinary Action”) are related to the rights pertaining to elections. Direct enforcement of title I rights, as such, is limited to civil suit in a district court of the United States by the person whose rights have been infringed.⁸ The exercise of particular rights of members is subject to reasonable rules and regulations in the labor organization’s constitution and by-laws.⁹

§ 452.8 Trusteeship provisions, title III.

Placing a labor organization under trusteeship consistent with title III, may have the effect of suspending the application of title IV to the trustee organization (see § 452.15).

§ 452.9 Prohibition against certain persons holding office; section 504.

Among the safeguards for labor organizations provided in title V is a prohibition against the holding of office by certain classes of persons.¹⁰ This provision makes it a crime for any person willfully to serve in certain positions, including as an elected officer of a labor organization, for a period of three to thirteen years after conviction or imprisonment for the commission of specified offenses, including violation of titles II or III of the Act, or conspiracy or attempt to commit such offenses. It is likewise a crime for any labor organization or officer knowingly to permit such a person to serve in such positions. Persons subject to the prohibition applicable to convicted

⁷73 Stat. 522, 29 U.S.C. 411.

⁸But the Secretary may bring suit to enforce section 104 (29 U.S.C. 414).

⁹Act, sec. 101(a)(1), 101(a)(2), and 101(b) (29 U.S.C. 411).

¹⁰Act, sec. 504(a) (29 U.S.C. 504), as amended by the Comprehensive Crime Control Act of 1984, Public Law 98-473, secs. 229, 235, 803 and 804. See text at footnote 23 for a list of the disabling crimes.